ARIZONA STATE BOARD OF PHARMACY 1700 W. Washington Street, Room 250 Phoenix, Arizona 85007 602-771-2727

IN THE MATTER OF :

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER NO. 08-0010-PHR

In the Matter of

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ALICIA HERNANDEZ

Holder of Pharmacy Technician License No. 3549 in the State of Arizona

Respondent

On March 20, 2008 the Arizona State Board of Pharmacy ("Board") considered the State's Motion to Deem Allegations Admitted at the Board of Pharmacy Offices, 1700 W. Washington Street, Room 312, in Phoenix, Arizona. Elizabeth Campbell, Assistant Attorney General, appeared on behalf of the State. Respondent did not appear. The Board was represented by Assistant Attorney General Chris Munns, with the Solicitor General's Section of the Attorney General's Office.

On March 20, 2008 the Board granted the State's Motion to Deem Allegations Admitted. Based upon A.R.S. § 32-1927(O) and the Complaint and Notice of Hearing No. 08-0010-PHB filed in this matter, the Board issues the following Findings of Fact and Conclusions of Law, and Order revoking Respondent's license.

FINDINGS OF FACT

- 1. During all times relevant to this Complaint, Respondent was employed as a pharmacy technician at Target Pharmacy #1439 ("Pharmacy") in Tucson, Arizona.
- 2. On June 4, 2007, the Pharmacy interviewed Respondent concerning a loss of controlled substances. Respondent admitted to Pharmacy officials that she was addicted to hydrocodone/APAP

 and had authorized refills of hydrocodone/APAP for herself. Respondent was terminated from employment.

- 3. Respondent had ten (10) prescriptions for hydrocodone/APAP 10/325 filled at the Pharmacy by either faxing the refill authorizations to the Pharmacy herself or by having an accomplice call in the refills for her.
- 4. In addition, Respondent fraudulently authorized the filing of a prescription for diazepam.
 - 5. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-2514(A)(5)(d).
 - 6. Diazepam is a Schedule IV controlled substance. A.R.S. § 36-2515(A)(2)(n).
- 7. On or about June 6, 2007, the Pharmacy reported the theft of controlled substance drugs to the Board.

CONCLUSIONS OF LAW

- 1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq*.
- 2. The Board may discipline a pharmacy technician who has engaged in unprofessional conduct. A.R.S. § 32-1927.01(A)(1).
- 3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(C)(6) ("Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug- related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.").
- 4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1901.01(C)(8) ("Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.").

- 5. A prescription-only drug may be dispensed only on a prescription authorized by a medical practitioner. A.R.S. § 32-1968(A).
- 6. A person may not knowingly acquire or possess a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a licensed prescriber. A.R.S. § 13-3406(A)(1). Furthermore, a person may not knowingly obtain or procure the administration of a prescription-only drug by fraud, deceit, misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-3406(B)(1). "The sale or dispensing or prescribing of narcotic drugs, except for medicinal use and under strict surveillance, [involves] moral turpitude." *Du Vall*, 49 Ariz. at 337, 66 P.2d at 1030.
- 7. It is unlawful for any person who is subject to A.R.S. § 36-2521 *et seq*. to intentionally or knowingly distribute or dispense a controlled substance in violation of A.R.S. § 36-2525. A.R.S. § 36-2531(A)(1).
- 8. A person shall not provide a false prescription for a controlled substance or knowingly or intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception or subterfuge, including the forgery or falsification of a prescription or the nondisclosure of a material fact. A.R.S. § 36-2531(E). A person who violates this statute is guilty of a class 4 felony.

9.

<u>ORDER</u>

In view of the above Findings of Fact and Conclusions of Law, the Board issues the following Order:

Pharmacy Technician license number No. 3549 issued to Alicia Hernandez is **REVOKED**.

A.R.S. § 32-1927.01(A)(1).

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified of the right to petition for a rehearing or review by filing a petition with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient reasons for granting a rehearing. A.C.C. R4-23-128. Service of this order is effective five (5) days after date of mailing.

If a motion for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing is required to preserve any rights of appeal to the Superior Court.

DATED this 20th day of March, 2008.

ARIZONA STATE BOARD OF PHARMACY

SEAL

Hal Wand, R.Ph. Executive Director

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1	COPIES mailed this day of March 2008, by
2	Certified Mail Receipt No. 700 72680 0001 2 192 1188
3	to
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5	Alicia Hernandez 4413 E. 3 rd Street, Unit #4
6	Tucson, AZ 85711 Respondent
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8	
9	COPIES of the foregoing mailed this day of March 2008, to:
10	Elizabeth Campbell, Assistant Attorney General
11	
12	and
13	Christopher Munns, Assistant Attorney General, Solicitors Office
14	
15	Both located at 1275 W. Washington
16	Phoenix, AZ 85007
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